

Application No. 09/826,414
Amendment dated August 22, 2003
Reply to Office Action of April 22, 2003

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REMARKS/ARGUMENTS

This is in response to the non-final Office Action mailed on April 22, 2003.

In a telephone conversation, the Examiner indicated that the deletion of the word "perpendicular" from claim 1 would overcome the rejections under 35 USC § 112. In the Office Action, the Examiner indicated that the word "perpendicular" caused him to interpret claim 1 as referring to the distance between adjacent faces of the paving stone rather than the distance between opposite faces. During the telephone conversation, the applicant's attorney asked whether the deletion of "perpendicular" would be considered to distinguish the present invention from the references of record. The Examiner stated that he could not comment on that issue in the absence of a Primary Examiner. The applicant's attorney requested an interview and, at the request of the Examiner, faxed in a written request for an interview. Thus far, the applicant's attorney has received no notice of a determination whether or not the request will be granted.

By the present Amendment, "perpendicular" has been deleted from claim 1. As a result, claim 1 now calls for the distances between the planar portions of the opposite faces to be substantially equal.

The Scheiwiller '827 reference, which is relied on by the Examiner, discloses paving stones having opposite faces, the distances between which are not even close to being equal to one another.

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It is pointed out that the distances between opposed faces of the Scheiwiller '827 are too different from one another to be considered, in the terms of claim 1, "substantially equal". In the case of *In re Faunce*, 24 USPQ 251 (1935), the CCPA stated that "substantially equal proportions" means that, although the proportions may vary slightly, neither will appreciably predominant. That case involved a medicinal preparation. In the Scheiwiller paving stones, one dimension predominates over the other two, or two dimensions predominate over the third. *In National Research Development Corp. v. Great Lakes Carbon Corp.*, DC Del., 1975, the court found that "substantially" in a claim is used to prevent avoidance of literal infringement by minor changes that do not cause a loss of the invention's benefit. The dimensions of the Scheiwiller '827 stone are sufficiently different from one another that the stone does not enjoy the benefit of the block of the present invention. More specifically, the Scheiwiller '827 stones are not formed so that each of the faces can be used as a horizontal upper face at the same height.

This last feature is disclosed in the application and can be appreciated from, for example, Figs. 1a and 1b and Fig. 4. The pavement that results from a combination of the paving stones of claim 1 laid with any face facing up is far different from the pavement that results from the pavement that will result from a combination of any of the paving stones of Scheiwiller '827 laid with various of its faces being the horizontal upper face. The horizontal upper faces of the pavement made from the various orientations of the Scheiwiller '827 paving stones will not be at the same height, but will be at very different heights, resulting in a very rough and uneven pavement.

It is submitted that one having ordinary skill in the art and viewing the Scheiwiller '827 and McClintock references would not find it obvious to produce a pavement in which different faces of the Scheiwiller paving stones are used as horizontal upper faces. Unlike the cubical stone of McClintock, the faces of Scheiwiller '827 paving stones would not be at the same height and would constitute a very rough pavement. As a result, there would have been no incentive for one having ordinary skill in the art to use different faces of the Scheiwiller '827 stone as the horizontal upper faces.

With respect to the disclosure of Scheiwiller '827 that its stone is "cuboidal", the applicant points out that the terms "cuboid" and "cuboidal" both appear in *Webster's New Collegiate Dictionary* and are in contrast to one another. Both words are adjectives. "Cuboid" means "approximately cubic in shape", whereas "cuboidal" means "somewhat cubical". In addition, the drawings of Scheiwiller '827 make clear what Scheiwiller means by "cuboidal", and Scheiwiller '827 does not contend that its paving stones are "cuboid". Thus, there is no disclosure in Scheiwiller '827 that its paving stones are even approximately cubic in shape. Therefore, the distances between opposite sides of the paving stone of Scheiwiller '827 are not substantially equal to one another.

Also by the present amendment, a new set of claims has been added which corresponds to the previously filed set of claims and specifically recites that the molded block has three sets of opposite faces and that the distance between the planar portions of each set of opposite faces is substantially equal to the distance between the planar portions of each other set of opposite faces.

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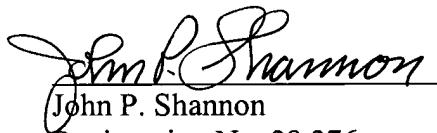
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It is submitted that all of the claims are allowable and the application is in condition for allowance. If the Examiner finds that issues remain that can be resolved by a telephone call, he is invited to call the undersigned at the number indicated below. If the Examiner finds that more substantial issues remain, he is requested to grant the interview with the applicant's attorney.

Respectfully submitted,

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